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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 RIN LAY and HUONG NGUYEN,  
12  
13 vs. Plaintiffs,  
14 MICHAEL S. ASTRUE, Commissioner of  
Social Security,  
15 Defendant.  
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CASE NO. 11-CV-1127 MMA (MDD)

**ORDER DENYING PLAINTIFFS'  
MOTION TO PROCEED IN  
FORMA PAUPERIS**

[Doc. No. 2]

17 On April 21, 2011, Plaintiffs Rin Lay and Huong Nguyen filed a Complaint against  
18 Defendant Michael S. Astrue, Commissioner of Social Security. [Doc. No. 1.] Plaintiff Rin Lay  
19 has submitted a Motion for Leave to Proceed *in forma pauperis* ("IFP"). [Doc. No. 2.]

20 All parties instituting any civil action, suit or proceeding in a district court of the United  
21 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28  
22 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only  
23 if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v.*  
24 *Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007).

25 "To proceed in forma pauperis is a privilege not a right." *Smart v. Heinze*, 347 F.2d 114,  
26 116 (9th Cir. 1965). Although only one filing fee is required per case, where there are multiple  
27 plaintiffs and only one plaintiff seeks to proceed IFP, a court may consider the availability of  
28 funds from the other plaintiffs in determining whether to grant IFP status. *See Nur v. Blake*

1 *Development Corp.*, 664 F. Supp. 430, 431 (N.D. Ind. 1987).

2 Plaintiff Lay attests he receives income from social security benefits, has a checking  
3 account with a present balance of sixty dollars, and owns no other property. However, named  
4 Plaintiff Nguyen has not submitted an affidavit of assets. The Court does not have sufficient  
5 information to determine whether Plaintiff Nguyen has the available funds to pay the filing fee in  
6 this action. Although parties need not be completely destitute to proceed IFP, a court must employ  
7 “the same even-handed care . . . to assure that federal funds are not squandered to underwrite, at  
8 public expense . . . the remonstrances of a suitor who is financially able, in whole or in material  
9 part, to pull his own oar.” *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I.1984).

10 Therefore, the Court **DENIES** without prejudice Plaintiffs’ motion to proceed IFP. To  
11 proceed with this action, Plaintiffs must either pay the \$350 filing fee, or submit a renewed motion  
12 to proceed IFP along with affidavits from both plaintiffs, on or before June 9, 2011.

13 **IT IS SO ORDERED.**

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15 DATED: May 26, 2011



16 Hon. Michael M. Anello  
17 United States District Judge  
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